

2-4-2022 Expert Witness Report by Gerald Fritts Exhibit 03
WHITEFISH CREDIT UNION COMMERCIAL LOAN WORKSHEET

Date: Feb. 16, 2009 Loan Officer: Doug J.
 Borrower: Thorco, Inc.
 Dennis & Donna Thornton Phone # Dennis-261-6814
 Address: 151 Amatasia Lane Phone # Donna-253-2581
 Kalispell Phone # Home-752-5623
 Business Type: Logging & Land Development Type of Organization: S-Corp.
 WCU relationship: Account # TBA \$\$ in Shares=
 Account # \$\$ in Shares=
 Existing Loans: Owing Committed Available Rate LTV Collateral
 None.

TOTAL \$0 \$0 \$0
LOAN REQUEST: \$3,360,000
 New \$\$ \$\$ Renewed Ln# Rate Balloon Payment \$\$ Freqcy Terms
 \$3,360,000 \$0 6.50% 2 Years Interest Mo. 2 Year Maturity

PURPOSE:

Loan funds are being requested by the above noted borrower for the purposes noted below.

SOURCE OF FUNDS

USE OF FUNDS

WCU Loan Proceeds	\$ 3,360,000	Third Party Payoff	\$ 1,360,000
		Road Work	890,000
		Utilities	435,000
		Landscaping	150,000
		Engineering & Surveying	25,000
		Interest Carry	500,000
Total Proceeds	\$ 3,360,000		\$ 3,360,000

The above noted planned expenditures will bring the subdivision to final plat stage which will allow for the sale of individual parcels.

COLLATERAL DESCRIPTION:

First mortgage position on 300 acres that has been divided into 13 parcels of 20 acres each and one parcel of 40 acres.

VALUE
 \$6,775,000

SOURCE
 Barrie Appraisal
 "As Completed"
 with no paved roads and
 no water system

DATE
 Jan. 2009

The current loan request would place the per acre indebtedness at \$11.2M per acre.

Additional collateral of approximately 200 acres in the same general area.

Estimated value by loan officer from above noted appr
 TOTAL \$2,000,000
 \$8,775,000
 LOAN TO VALUE= 38.3%

Source(s) of Repayment:

(1) Sale of Lots

(2) Sale of other assets of borrower & guarantor

Strengths: Loan to value, interest carry costs included in loan proceeds

Weaknesses: Competition (number of lots available) and demand for lots

Exceptions to Policy: None known

Action Taken by: LO Feb. 16, 2009 Feb. 17, 2009 CC Feb. 24, 2009 BOD Feb. 18, 2009

>>> Additional discretionary approval limit for LOC of also approved on by

Conditions/Reasons

Collateral Analysis							
Expressed in (000's)							
Collateral Description	Loan #	Valuation Date	Value	Prior Liens	Advance Rate	Liquidation Value	Valuation Source
300 Acres + 200 Acres	750	02/23/11	\$ 3,333,000	\$ 3,360,133	70%	\$ 2,333,100	Appraisal
Total			\$ 3,333,000	\$ 3,360,133		\$ 2,333,100	
*Advance Rates should not exceed 70% for RE							
Impaired <input checked="" type="checkbox"/> Yes *If yes, impairment analysis is required							
Summary of Classification							
<p>*Give detailed explanation for why the credit has been criticized</p> <p>Borrower Background and Loan History:</p> <p>Loan #750 financed additional development costs for a residential subdivision located near Somers. The subject property is approximately 300 acres in size cut up into 13 parcels of 20 acres each, and one parcel of 40 acres at the time of our loan. The original intent was to complete the improvements to support the 14 lots and market them for not less than \$800,000 each. It should be noted that the borrowers changed the scope of the project to sub-lot the 14 parcels and create 62 "high-end" residential lots. Each lot would be serviced by a community water system and on their own for septic. The Credit Union is also secured by an additional 200 acres of undeveloped ground located in the same vicinity, however, not contiguous.</p>							
Action Plan							
<p>*Action Plans are to be updated with tracked changes.</p> <p>Attorney Ryan Purdy is working closely on file. Efforts are being made to meet with the debtors new attorney and our attorney to construct a workout discussion, if fails, attorney to proceed with moving forward on foreclosure.</p>							
Quarterly Update of Events							
<p>*Updates are to be kept as a log</p>							

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

RELEASORS: Thorco, Inc., Dennis Thornton, Donna Thornton
(collectively "Thorco").

RELEASEE: Whitefish Credit Union ("WCU").

DESCRIPTION OF CASUALTY: All counterclaims described in DV-12-174B.

SETTLEMENT AND RELEASE TERMS:

1. Cash Component

WCU shall pay one hundred fifty thousand dollars (\$150,000) to Releasors within three days of the execution of this Settlement Agreement and Mutual Release.

2. Option to Purchase

- a. Within 18 months of the date of this Settlement Agreement and Mutual Release, Thorco may exercise an option to purchase the properties described above for one million four hundred thousand dollars (\$1,400,000). The option price is allocated to each parcel as follows: The 300 Acre Tract, legally described in Exhibit A, is priced at \$1,100,000; the 200 Acre Tract, legally described in Exhibit A, is priced at \$300,000. Within the 18 months, Thorco may exercise its option to purchase either the 200 Acre Tract, the 300 Acre Tract, or both.
- b. WCU shall execute releases of its mortgages for the 200 and 300 acre tracts, a copy of which are attached as Exhibit B. At execution of this agreement, the executed releases shall be deposited into escrow with First American Title Company. If Thorco timely exercises its option, First American Title shall record the appropriate release or releases.
- c. Thorco shall execute Non-Merger Warranty Deeds conveying all of Thorco's right, title, and interest in the 200 and 300 acre tracts to WCU along with a Realty Transfer Certificate, a copy of which are attached as Exhibit C. At execution of this agreement, the executed Non-Merger Warranty Deeds shall be deposited into escrow with First American Title Company. If Thorco fails to timely exercise its option(s), First American Title shall record the appropriate deed(s).

3. Deficiency

WCU agrees to waive any claim for deficiency under any loan document, note, or guaranty at issue in the above-described civil matter, Cause No. DV-12-174B.

4. Right of Redemption

Thorco waives any right of redemption in the 200 or 300 acre tracts.

5. Stipulation to Vacate Judgment and Dismiss with Prejudice

The parties agree that they, or their attorneys of record, shall stipulate to vacate the Judgment of Foreclosure and Order of Sale and dismiss with prejudice, as fully settled upon the merits, the above-described civil matter, Cause No. DV-12-174B. Each party shall pay their own respective costs and attorneys' fees.

6. Release

Releasors, in consideration of the terms of the Settlement Agreement set forth above, fully and forever release and discharge WCU, its subsidiaries, affiliates, and parent companies, heirs, executors, personal representatives, successors, assigns, employers, employees, agents, attorneys, and any other person, firm or corporation liable or who may be claimed to be liable as a result of the casualty described, from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the described casualty, including any and all claims for attorneys' fees.

7. Future Damages

Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, Releasors agree, as a further consideration of this agreement, that this Mutual Release applies to any and all injuries, damages and losses resulting from the casualty described herein, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

8. No Admission of Liability

It is understood that the above-mentioned sum is accepted by each recipient as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither payment of the sum nor the negotiations for settlement shall be considered as an admission of liability. The debt evidenced by Judgment of Foreclosure and Order of Sale in Cause No. DV-12-174B, Flathead County District Court is disputed by Thorco.

9. No Additional Claims

The parties mutually represent that no present or future claims are filed or contemplated against any other party potentially liable for the losses, damages and injuries for which this Mutual Release is given. In the event any additional claim is made which directly or indirectly results in additional liability exposure to either party for the losses, injuries, and damages for which this Mutual Release is given, the parties hereto covenant and agree to indemnify and save each other harmless from all such claims and demands, including reasonable attorney fees and all other expenses necessarily incurred.

10. Further Assurances

The parties agree to cooperate fully, to execute any and all additional documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement and Mutual Release.

11. Attorneys' Fees

In the event suit is brought or claim is made arising out of the breach of any of the provisions of this Settlement Agreement and Mutual Release or to enforce any of the provisions of this Settlement Agreement and Mutual Release, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the other party.

12. Confidential

The parties acknowledge that the amount and terms of this settlement are to be confidential and shall not be publicly disclosed by them or their representatives, except a party may disclose such information: (1) as its counsel may advise it is required to disclose under applicable laws and regulations, (2) as otherwise required by an order of a court of competent jurisdiction, or (3) as required for Thorco to disclose terms in connection with efforts related to performance of the above-described Option to Purchase, including without limitation, efforts to secure financing or investors.

13. Tax Issues

WCU shall file a Form 1099 in accordance with its standard practices regarding debt reduction. WCU agrees it will report only the principal balance of the loans in question, an amount up to \$3,360,170.62, on the Form 1099. Thorco agrees to bring no claim against WCU regarding the Form 1099. WCU agrees not to formally or voluntarily intervene with any tax-related protest to the IRS by Thorco regarding the Form 1099, and will only participate to the extent it is legally obligated or compelled to do. WCU agrees it will make no negative report to any credit agency in relation to the loan in question.

Prior to the date escrow is established and during the time documents are held in escrow, real estate tax notices were and will be received by Thorco. Thorco may elect not to

pay the real estate taxes, delinquent or to become delinquent, because it may elect not to close the escrow and record the releases of mortgage. WCU understands that it may be obliged to pay delinquent real estate taxes should it close the escrow and have the Warrant Deeds recorded.

14. Final Agreement

This Settlement Agreement and Mutual Release represents the parties' entire agreement with respect to the subject matter of this Agreement and supersedes any and all prior agreements, negotiations, and oral understandings. This Settlement Agreement and Mutual Release may not be modified or amended unless done so in writing and executed by the parties.

15. Disclaimer

The parties have carefully read the foregoing, discussed its legal effect with their attorneys, understand the contents thereof, and sign the same of their own free will and accord.

This Settlement Agreement and Mutual Release shall be binding upon the parties' heirs, executors, successors, personal representatives and assigns.

DATED, this 8 day of June 2016.

CAUTION: READ BEFORE SIGNING!

PARTIES:

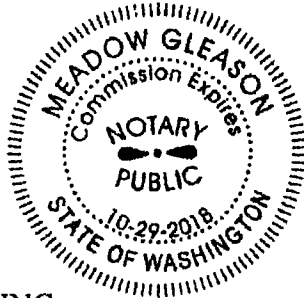
THORCO, INC.

X Dennis Thornton
By Dennis Thornton As: President

STATE OF Washington)
County of Pend Oreille : ss

This instrument was acknowledged before me on the 8 day of June 2016, by
Dennis Thornton as President of Thorco, Inc.

(SEAL)



[Signature]
Notary Public for the State of Washington

THORCO, INC.

X Donna Thornton
By: Donna Thornton As: Sec/Treas

STATE OF Washington)
County of Pend Oreille : ss

This instrument was acknowledged before me on the 8 day of June 2016, by
Donna Thornton as Sec/Treas of Thorco, Inc.

(SEAL)



[Signature]
Notary Public for the State of Washington

DENNIS THORNTON

X *Dennis Thornton*

STATE OF Washington)
County of Pend Oreille) : ss

This instrument was acknowledged before me on the 8 day of June 2016, by
Dennis Thornton.

(SEAL)



Meadow Gleason
Notary Public for the State of Washington

DONNA THORNTON

X *Donna Thornton*

STATE OF Washington)
County of Pend Oreille) : ss

This instrument was acknowledged before me on the 8 day of June 2016, by
Donna Thornton.

(SEAL)



Meadow Gleason
Notary Public for the State of Washington

WHITEFISH CREDIT UNION

X. [Signature]

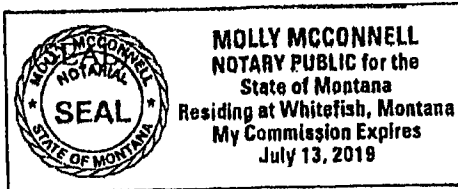
By: Aaron D. Archer As: SAG OFFICER

STATE OF MONTANA)

: SS

County of Flathead)

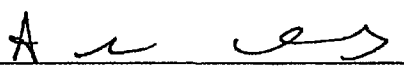
This instrument was acknowledged before me on the 8th day of June 2016, by
AARON ARCHER as SAG OFFICER of Whitefish Credit Union.



[Signature]
Notary Public for the State of Montana

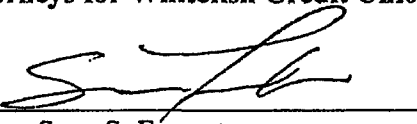
ATTORNEYS:

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Attorney for Thorco, Inc., Dennis Thornton, and Donna Thornton

By: 
John L. Amsden
Justin P. Stalpes
Anthony F. Jackson

Date: 6/7/16

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Frank Lloyd Wright Building
341 Central Avenue
Whitefish, Montana 59937
Attorneys for Whitefish Credit Union

By: 
Sean S. Frampton
Johnna J. Preble

Date: 6-9-16

General Questions

Question

1. Does the Montana mortgage act apply if a dwelling is intended to be built within a two-year period?

Yes____No____

Question

2. Is the borrower's intent to construct a dwelling presumed unless the borrower has submitted a written, signed statement to the contrary?

Yes____No____

Question

3. Is a transfer that is made only for the security for the performance of another act is that deemed a mortgage?

Yes____No____

71-1-107. Transfers of interest. (1) Every transfer of an interest in property, other than in trust, **made only as a security for the performance of another act is to be deemed a mortgage,** except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge

TITLE 32. FINANCIAL INSTITUTIONS

CHAPTER 9. RESIDENTIAL MORTGAGE BROKERS, LENDERS, SERVICERS, AND LOAN ORIGINATORS

Question

4. Does the Montana Mortgage Act apply to all financial transactions. If a dwelling is intended to be built within two years?

Yes____No____

Part 1. Montana Mortgage Act

Definitions

32-9-103. Definitions. As used in this part, the following definitions apply:

(41) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

Question

5. Are borrowers entitled to their loan file?

Yes____No____

Question

6. Are borrowers entitled to a payoff, for any day of the business week?

Yes____No____

UNIFORM RESIDENTIAL MORTGAGESATISFACTION ACT

(a) An entitled person or an authorized agent of an entitled person may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain:

(1) the entitled person's name;

(f) A secured creditor must provide upon request one payoff statement without charge during any six-month period. A secured creditor may charge a fee of [\$25] for each additional request for a payoff statement during that six-month period. However, a secured creditor may not charge a fee for providing or delivering an updated payoff amount under subsection (e) or a corrected payoff statement under Section 202(a).

Question

7. Is a mortgage a special lien?

Yes ____ No ____

TITLE 71. MORTGAGES, PLEDGES, AND LIENS

CHAPTER 3. LIENS

Part 1. General Provisions

Definitions

71-3-101. Definitions. For purposes of this part, the following definitions apply:

(1) A "general lien" is one which the holder of the lien is entitled to enforce as a security for the performance of all the obligations or all of a

particular class of obligations that exist in the holder's favor against the owner of the property.

(2) A "lien" is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. Liens are either general or special.

(3) A "**special lien**" is one that the holder of the lien can enforce only as security for the performance of a particular act or obligation and of the obligations that may be incidental to the particular act or obligation.

Question

Yes ____ No ____

8. Can a recorded mortgage lien be used for any other obligation?

Yes ____ No ____

71-3-106. Extent of lien. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

Question

9. Is there only one action for foreclosure?

Yes ____ No ____

71-1-222. Proceedings in foreclosure suits. (1) There is only one action for the recovery of debt or the enforcement of any right secured by a mortgage upon real estate, and that action must be in accordance

with the provisions of this part. In the action, the court may, by its judgment, direct:

Question

10. If a judgment in a foreclosure lawsuit is vacated, is that judgment still owed?

Yes ____ No ____

Question

11. If a foreclosure lawsuit is dismissed with prejudice is that considered adjudicated on the merits?

Yes ____ No ____

Question

12. If a foreclosure lawsuit is dismissed with prejudice is that considered discharge?

Yes ____ No ____

71-1-212. Penalties for failure to give certificate of discharge or release after full performance. After the full performance of the conditions of a mortgage and whether before or after a breach of the mortgage, a mortgagee or the personal representative or assignee of the mortgagee who refuses or neglects to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release of the mortgage within 90 days after a request for one is liable to the mortgagor or the mortgagor's heirs or assigns in the sum of \$500 and all actual damages resulting from the neglect or refusal.

Question

13. Can a lender ever sue to foreclose on that particular lien again?

Yes ____ No ____

Question

14. How much is owed is owed after a dismissal with prejudice in a foreclosure lawsuit?

Yes ____ No ____

Question

15. Does the lien become invalid after a dismissal with prejudice in a foreclosure lawsuit?

Yes ____ No ____

The below are all Montana Supreme Court rulings

The effect of a stipulation is the same as a judgment on the merits. Accordingly, a dismissal with prejudice is *res judicata* as to every issue raised in the pleadings

The stipulation for dismissal with prejudice in the instant case operates the same as does the release of one joint tortfeasor. Nothing in the stipulation for dismissal with prejudice in any way hints at a reservation of the right to sue the City of Havre and Hill County. As in the cases involving the release of one joint tortfeasor, that **reservation must appear on the face of the instrument**

"The term 'with prejudice' as used in a judgment of dismissal has a well-recognized legal import. It is the converse of the term 'without prejudice', and a judgment or decree of dismissal with prejudice is as **conclusive of the rights of the parties as if the suit had been prosecuted to a final adjudication adverse to the plaintiff.**"

Therefore, a stipulation of dismissal with prejudice of a defendant is tantamount to a judgment on the merits; and accordingly, such a

dismissal with prejudice is res judicata as to every issue reasonably raised by the pleadings.

This Court will look at the dismissal with prejudice on its face, and will not look behind the words "with prejudice."

"In Montana, the rule has long been established that the release of one joint tortfeasor releases the others, unless there are clear provisions in the release to the contrary." 161 Mont. at 311-312, 506 P.2d at 847.

Question

16. If a lien is satisfied or determined by a court of competent jurisdiction to be invalid is a lender required to file a satisfaction of lien?

Yes ____ No ____

TITLE 71. MORTGAGES, PLEDGES, AND LIENS

CHAPTER 3. LIENS

Part 1. General Provisions

Acknowledgment Of Lien Satisfaction -- Penalty

71-3-131. Acknowledgment of lien satisfaction -- penalty. (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or **the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction,** the **creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in** each county in which the notice of lien was filed. **If any creditor fails to acknowledge satisfaction, the**

creditor is liable to any person injured by the failure for a civil penalty of \$100, plus any other damages provided by law.

Question

17. Is an assignment for the benefit of a creditor required to be recorded?

Yes____No____

What are the effects if it is not record?

Question

18. If a transfer is made for security is that deemed a mortgage?

Yes____No____

71-1-107. Transfers of interest. **(1) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act is to be deemed a mortgage.**

Montana Code Annotated 2021

TITLE 31. CREDIT TRANSACTIONS AND RELATIONSHIPS

CHAPTER 2. DEBTOR AND CREDITOR RELATIONSHIPS

Part 2. Assignments for Benefit of Creditors

Effect Of Failing To Record

31-2-217. Effect of failing to record. **An assignment for the benefit of creditors is void** against creditors of the assignor and against purchasers and encumbrances in good faith and for value **unless it is recorded within 20 days after the date of the assignment.**

Question

19. Can a lender recover possession of real property without a foreclosure and sale?

Yes____No____

71-1-202. Mortgage not considered conveyance -- recovery of possession. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. When the mortgage confers a power of sale, as mentioned in 71-1-111, possession may be recovered according to the terms of the mortgage.

Specific Questions To Whitefish Credit Union

Questions

20. Are all real estate mortgage transactions required to be in separate escrow account?

Yes____No____

Question

21. Is there a timeframe for documents to be in escrow?

Yes____No____

Question

22. Does Whitefish Credit Union have its own escrow department?

Yes____No____

Question

23. Does a person have to be licensed and work for Whitefish Credit Union to deposit and open the escrow that involves Whitefish Credit Union?

Yes____No____

24. Is it Whitefish Credit Union duty open all escrows that involve Whitefish Credit Union?

Yes____No____

Question

25. Is Whitefish Credit Union authorized to use other escrow companies?

Yes____No____

Question

26. Is it Whitefish Credit Union duty to record liens and lien releases?

Yes____No____

Specific Questions

To Thorco Inc and the Thorntons

Question

27. How much was owed on Thorco Inc.'s loan after it was dismissed with prejudice. On August 24, 2016?

Question

\$ _____

28. If anyone from Whitefish Credit Union stated Thorco Inc. was in foreclosure after August 24, 2016, would that be a false statement?

Yes _____ No _____

Question

29. If anyone from Whitefish Credit Union stated the Thorntons Thorco Inc. owed more than \$4 million after August 24, 2016. Would that be a false statement?

Yes _____ No _____

Question

30. Do the Thorntons or Thorco Inc. owe \$6,945,093.14 to Whitefish Credit Union on the 2009 mortgage as of today?

Yes _____ No _____

Question

31. If Whitefish Credit Union claim to have recorded mortgages in the amount of \$1,400,000 on the Thorco Inc. property would they be recorded at the Flathead County clerk and recorder's office?

Yes ____ No ____

Question

32. Was the place of payment, First American Title in Kalispell, Montana for the June 8, 2016 mortgage/settlement agreement and mutual release.

Yes ____ No ____

Question

33. Was First American Title the place of escrow for the June 8, 2016 mortgages/settlement agreement and mutual release?

Yes ____ No ____

Question

34. Does a condition precedent have to be disclosed?

Yes ____ No ____